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September 26, 2017

Via ECF
Honorable Judge Donnelly
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Miranda v. General Auto Body Works, Inc., et. al.
Case No.: 17-CV-4116 (AMD)(RER)

Dear Judge Donnelly:

I represent the Defendant in the within matter. In so doing, we filed a pre-answer motion to dismiss, pursuant to FRCP § 12(b)(6). We received an ECF bounce on Friday September 22, 2017, stating that a motion conference is required prior to the filing of the motion. Admittedly, I did not see that ECF bounce until today.

Initially, I apologize for any violation of the Court's rules, as I always thought that a pre-answer motion did not require a motion conference prior to the filing of the application.

As to the substance of the motion, I believe that this case (as it relates to New York State law claims), presents an issue of law as to whether those causes of action may lie against Defendant. Plaintiff's initial filing of an administrative complaint against Defendant waived his right to bring a subsequent lawsuit for the same relief against the Defendant. See generally Harris v. Seward Park Hous. Corp., 2009 N.Y. Misc. LEXIS 5919, *21 (Sup. Ct. NY Co. 2009)

In the above regard New York state has historically held that a party who elects a forum to resolve a dispute is unable to flit into another forum. Consequently, we seek dismissal of the supplemental State Law claims that have been brought against Defendant under an election of remedy theory.

As an additional ground to move pre-answer, we seek dismissal of the New York State wage theft claim involving the failure to provide the required labor notices. The rationale for this branch of the motion is simple: this branch of state law was not in effect when Plaintiff was initially employed with Defendant. Therefore, this cause of action cannot lie against Defendant as its application is prospective, not retroactive. See NYLL § 195 ("If any employee is not provided **within ten business days of his or her first day of employment**")

Insofar as our motion to dismiss has palpable merit, we would request permission for its filing and an appropriate briefing schedule on the same.

Thank you for time and courtesy of accepting this correspondence.

Very Truly Yours,
THE LAW OFFICE OF JASON TENENBAUM PC

/s/ Jason Tenenbaum

JT: